

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

EVANGELINE ROCKWELL

§

V.

§

CIVIL ACTION NO. 5:07cv36

COMMISSIONER, SOCIAL SECURITY §

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Caroline M. Craven. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition. No objections were filed. This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions.

On remand the ALJ is instructed to further evaluate the December 2005 examining psychologist's opinion (*Tr.* 1055); obtain medical expert testimony from a psychiatrist or psychologist regarding the nature and severity of Plaintiff's impairments; further evaluate Plaintiff's mental impairments pursuant to 20 C.F.R. §§ 404.1520a and 416.920a and provide an appropriate rationale for the "B" criteria of the mental listings, where appropriate; and consider all applicable listings, including 12.04, 12.06, 12.02 and 11.18. *See Audler v. Astrue*, 501 F.3d 446, 448 (5th Cir. 2007). The ALJ is instructed to obtain medical expert opinion evidence, or evidence from a state agency medical consultant, regarding whether Plaintiff's impairments meet or equal any listing. *See Social Security Ruling (SSR) 96-6p* (1996). In regard to the above, pursuant to *SSR 06-3p*, the ALJ is instructed to consider the speech and language therapist's report submitted with the request for review (*Tr.* 1106). The Administrative Law Judge is instructed to consider, for its relevance to the period prior to July 28, 2006, the additional evidence obtained in connection with the subsequent

application.

Finally, the Appeals Council observed that Plaintiff filed prior applications for a period of disability, disability insurance benefits, and supplemental security income on November 16, 2000. The Agency denied these claims initially on February 7, 2001. On May 9, 2002, an Administrative Law Judge issued an unfavorable decision (*Tr.* 35), and the Appeals Council denied review of that decision. As Plaintiff filed her current claim within two years of the date of the initial determination on the prior claim, the prior claim is subject to potential reopening pursuant to 20 C.F.R. §§ 404.987-989 and 416.1487-1489. The Administrative Law Judge is instructed to consider this issue upon remand as well.

Accordingly, the Court

ORDERS that Defendant's motion to dismiss (dkt#16) is **GRANTED**; and

ORDERS, ADJUDGES, and DECREES that the 42 U.S.C. § 1383(c)(3) claims against Defendant Commissioner, Social Security Administration in this action are **REVERSED** and **REMANDED** for further consideration.

SIGNED this 24th day of March, 2008.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE